

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MAGDALENA SERRANO**  
Claimant

VS.

**EXCEL CORPORATION**  
Respondent  
Self-Insured

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Docket No. 176,759

**ORDER**

On September 12, 1996, the application of claimant for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge Jon L. Frobish on February 19, 1996, came on for oral argument.

**APPEARANCES**

Claimant appeared by and through her attorney, Stanley R. Ausemus of Emporia, Kansas. Respondent, a qualified self-insured, appeared by and through its attorney, D. Shane Bangerter of Dodge City, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

**ISSUES**

What is the nature and extent of claimant's injury and/or disability?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein.

Claimant suffered accidental injury to her hands, arms, and shoulders on February 1, 1993. Thereafter, she was treated, reached maximum medical improvement, and returned to respondent's employment in a light-duty job in the laundry room. While working light duty in the laundry, she was given a plant tour and allowed to choose a regular job which she felt was within her capabilities. A videotape of that job, which involved bagging flap meat, was provided both to Philip R. Mills, M.D., who examined claimant on two separate occasions, and C. Reiff Brown, M.D., who examined claimant as the result of an independent medical examination referral from the Administrative Law Judge. Both Dr. Mills, a physical medicine specialist, and Dr. Brown, an orthopedic surgeon, felt the job on videotape was within claimant's restrictions and limitations.

Claimant contends the opinion of Dr. Mills is inappropriate as Dr. Mills last examined claimant on August 3, 1993, and did not have up-to-date information on claimant's current condition. Dr. Mills examined the videotape on January 10, 1994, but was not aware of claimant's physical condition at that time. He did opine the job was within the limitations provided claimant at his last examination in August 1993. Dr. Brown examined claimant on August 10, 1994, had the opportunity to view the videotape, and felt the job in the videotape was within the limitations and restrictions he placed upon claimant.

Claimant was offered the job of bagging flap meat but refused alleging that she was physically incapable of performing the activities in that job even though she had picked the job during the plant tour.

The Administrative Law Judge, in citing Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995), found that claimant's refusal to even attempt the work was inappropriate. The Court of Appeals in Foulk held that:

"The legislature clearly intended for a worker not to receive compensation where the worker was still capable of earning nearly the same wage. Further, it would be unreasonable for this court to conclude that the legislature intended to encourage workers to merely sit at home, refuse to work, and take advantage of the workers compensation system."

In this instance claimant's unreasonable refusal to even attempt the bagging flap meat job, after two physicians opined it would be within her physical restrictions, was unreasonable.

The Administrative Law Judge went on to award claimant a 7 percent whole body functional impairment pursuant to the opinion of Dr. Brown. The Appeals Board finds, after reviewing the medical evidence, a 7 percent whole body functional impairment is appropriate and affirms the award.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Jon L. Frobish dated February 19, 1996, should be, and is hereby, affirmed and an award is granted in favor of the claimant, Magdalena Serrano, and against the respondent, Excel Corporation, a qualified self-insured, for an accidental injury sustained on February 1, 1993.

Claimant is entitled to 415 weeks permanent partial disability compensation at the rate of \$19.57 per week for a total award of \$8,121.55 for a 7% whole body permanent partial general disability.

As of July 23, 1997, there would be due and owing to claimant 233.29 weeks permanent partial disability compensation at the rate of \$19.57 per week in the sum of \$4,565.49 which is ordered paid in one lump sum minus any amounts previously paid. Thereafter, the remaining balance in the amount of \$3,556.06 shall be paid at the rate of \$19.57 per week for 181.71 weeks until fully paid or until further order of the Director.

Pursuant to K.S.A. 44-536 claimant's contract of employment with her counsel is approved.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Barber & Associates	
Deposition of Philip Roderick Mills, M.D.	\$165.40
Transcript of Regular Hearing	75.50
Underwood & Shane	
Deposition of C. Reiff Brown, M.D.	\$190.50
K. Pfannenstiel Reporting & Assoc.	
Deposition of Leslie Morris	\$119.06
Deposition of Aly M. Mohsen, M.D.	245.10

Deposition of Charlie Paulson	67.90
Transcript of Regular Hearing	194.70
Hostetler & Associates, Inc.	
Deposition of Donald E. Vander Vegt	\$188.95
Advanced Court Reporting Services	
Deposition of Arturo Ponce	\$167.65
Deposition of Susan Stephens	219.50

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS  
D. Shane Bangerter, Dodge City, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director